

Brewery Workers Union Local Union No. 9, directly affiliated Local Union, AFL-CIO and Miller Brewing Company and Local Union No. 113, Laborers International Union of North America, AFL-CIO, Case 30-CD-91

June 18, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Miller Brewing Company, herein called the Employer, alleging that Brewery Workers Union Local Union No. 9, directly affiliated Local Union, AFL-CIO, hereinafter called the Brewery Workers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activities with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Local Union No. 113, Laborers International Union of North America, AFL-CIO, herein called the Laborers.

Pursuant to notice, a hearing was held before Hearing Officer Barbara J. Buhai on January 19, 22, and 23, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, all parties filed briefs.

The National Labor Relations Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a Wisconsin corporation engaged in the manufacture and sale of beer and other malt beverages at its facilities located in Milwaukee, Wisconsin. During the past calendar year, a representative period, the Employer received gross revenues in excess of \$500,000 in the course and conduct of its business and sold and shipped goods and materials valued in excess of \$50,000 directly to points located outside the State of Wisconsin. The parties also stipulated, and we find, that the Employer is an employer within the meaning of Section 2(2) of the Act, it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Brewery Workers and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The situs of this work dispute is the Employer's brewery in Milwaukee, Wisconsin. At this brewery, the Employer employs approximately 2,000 hourly workers, including members of 10 different unions. Among these employees are more than 1,600 members of the Brewery Workers and approximately 10 members of the Laborers. The members of the Brewery Workers work in several departments, including the brewing, mechanical, delivery, bottling, and general trucking departments. The instant dispute concerns the general trucking department.

Employees represented by the Brewery Workers and Laborers are covered by separate collective-bargaining agreements with the Employer.¹ The Brewery Workers' contract contains distinct provisions for employees in each department, detailing wages and certain working conditions. According to the terms of the current agreement, the work to be performed by employees in the general trucking department is governed by a "work list" dated October 31, 1955.

The present dispute arose from a series of grievances filed by members of the Brewery Workers beginning in May 1980.² These grievances alleged violations of the contract in that employees represented by the Laborers were performing various tasks that should have been assigned to members of the Brewery Workers. The Employer denied all of these grievances, asserting that its work assignments to Laborers members had been proper. On August 1, 1980, representatives of the Employer, the Brewery Workers, and the Laborers met in an unsuccessful attempt to resolve this dispute. Following this meeting, the Employer prepared a list detailing the different tasks that were in dispute, but continued to insist that its work assignments had been correct. Subsequently, the Brewery Workers filed additional grievances against the Employer concerning work assigned to employees

¹ The Employer negotiates these agreements as a member of the Brewery Proprietors of Milwaukee, a multiemployer association. The contracts involved herein are between the two Unions and this association.

² An additional, related grievance, dated February 1, 1979, was presented as an exhibit at the hearing.

represented by the Laborers.³ These grievances were also denied by the Employer. On December 4, 1980, the Brewery Workers threatened the Employer with a work stoppage if its members were not awarded the disputed work.⁴ On December 15, 1980, the Employer filed a complaint with the Board, claiming that this threat violated Section 8(b)(4)(D) of the National Labor Relations Act.

B. *The Work in Dispute*

The parties did not stipulate as to the work in dispute. The notice of hearing states that "[t]he dispute concerns the assignment of the various work tasks described in 'Exhibit A,'" the aforementioned list of the disputed tasks compiled by the Employer. Exhibit A, as amended by agreement of the parties at the hearing, lists the following items:

1. Transportation of unmarked hops and grain to the lab.
2. Transportation of janitorial supplies for sanitation-maintenance to Buildings 40 and 35.
3. Transportation of hot and cold cups to the following specific areas: Brewhouse, Fermenting, Finishing, Guard Office, Labs—Building 36, Pipe Shops, Tapomatic, Kegomatic, Carpenter Shop, Building 29 Mezzanine, Building 63 Engineer, Supervisor Offices in Buildings 60, 29 and 58.
4. Transportation of coffee supplies (including cups, sugar and cream) from corporate building No. 66 to MIS in Building No. 35.
5. Transportation of garbage cans, ladders, dock plates, banding strips, crowbars, pry bars, come-alongs, flashlights and batteries (when new from receiving to first point of use) if they have been ordered by the maintenance supervisor.
6. Transportation of ink from receiving to three storerooms.
7. Transportation of ink solvents from receiving to three storerooms and electrical shop.
8. Transportation of stationery supplies (except to Building 55 dispatch).
9. Transportation of gas tanks to labs for use in testing products.
10. Cleaning of the Miller Mall.
11. Transportation of sta-dri oil absorbents to the oiler room and the machine shop along with empty and full drums.
12. Transportation of boiler room cleaning compounds.
13. Cleanup of tour center and all automobile parking lots and perimeter fences.

14. Transportation of muriatic acid to clean fountains.
15. Cleaning of streets.
16. Transportation of garbage containing advertising materials.

During the second day of the hearing, at the suggestion of the Brewery Workers, the Hearing Officer ruled that the work in dispute includes the subject matter of the 22 grievances filed by the Brewery Workers, as well as the items listed in Exhibit A. The Hearing Officer, in announcing this change, noted that Exhibit A was prepared by the Employer and that the Brewery Workers never conceded that it listed the work in dispute in its entirety.

Both the Laborers and the Employer immediately objected to the Hearing Officer's ruling. However, in its post-hearing brief, the Laborers has withdrawn any objections to broadening the scope of the work in dispute. The Employer has not specifically withdrawn its objection, but concedes in its brief that the work in dispute includes the work listed in the Brewery Workers grievances. Accordingly, we find that the work in dispute includes the tasks that are the subjects of the 22 grievances filed by the Brewery Workers, as well as those 16 items included in Exhibit A. These grievances were presented at the hearing as Employer Exhibits 2(a)-(v). The grievances specifically concern the following: 2(a) hauling janitorial supplies, beer and coffee cups, and filling salt barrels; (b) hauling hand soaps and paper towels to building 54; (c) hauling cups to building 29; (d) handling advertising materials; (e) transporting ink to building 29; (f) delivering truck shipment tickets to the dispatch office; (g) and (h) hauling petri dishes to the laboratories; (i) a general pattern of Employer work assignments which allegedly contravenes the general trucking work list; (j) hauling paper towels and toilet articles; (k) hauling plastic garbage bag liners; (l) alleged continuous Employer violations of the contract; (m) hauling laboratory equipment to building 15; (n) hauling paper cups to the brewhouse; (o) hauling paper cups to the finishing supply room; (p) hauling cleaning solvent to the engine room; (q) hauling drinking cups to building 29; (r) hauling beer cups to the brewhouse; (s) hauling petri dishes to building 36; (t) hauling oil absorbents to building 58; (u) hauling oil absorbents to building 60; and (v) hauling laboratory equipment to the laboratories.

The vast majority of the Brewery Workers grievances, specifically 2(a), (c), (d), (e), (j), (k), (m), (n), (o), (p), (q), (r), (t), (u), and (v), concern tasks that are listed in Exhibit A. In addition, there are two tasks which are not directly includable in items listed in Exhibit A but which are substantial-

³ The Employer presented a total of 22 grievances which were filed by the Brewery Workers as exhibits at the hearing.

⁴ The parties stipulated as to the existence of this threat.

ly similar to them. Specifically, grievance item 2(b) may be dealt with along with Exhibit A, item 2, and grievance items 2(g), (h), and (s) may be treated similarly to Exhibit A, item 9. No testimony as to grievance items 2(f), (i), and (l) was elicited at the hearing.⁵

Accordingly, the work tasks which are in dispute may be categorized as follows:

1. Transportation of equipment and supplies from the receiving area to various locations throughout the plant.⁶
2. Outdoor cleaning in specified locations.⁷
3. Transportation of garbage containing advertising materials.⁸

C. The Contentions of the Parties

The Employer and the Laborers contend that the work items in dispute should be assigned to employees represented by the Laborers based on past practice. In addition, they assert that, with respect to the transportation of unmarked hops and grain to the laboratories and the transportation of garbage containing advertising materials, it would be more efficient and economical for Laborers members to be assigned the work.

The Brewery Workers contends that the work tasks in dispute should be assigned to its members based on past practice and the 1955 worklist.

D. Applicability of the Statute

Section 10(k) of the Act empowers the Board to determine a dispute out of which an 8(b)(4)(D) charge has arisen. However, before the Board proceeds with a determination of the dispute, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that there is no agreed-upon method, binding on all parties, for the voluntary adjustment of the dispute.

As indicated above, on December 15, 1980, the Brewery Workers threatened the Employer with a work stoppage unless the Employer agreed to its demand to assign the work in dispute to employees represented by it. In view of this conduct, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.⁹ As

⁵ Accordingly, we will not discuss or assign these work tasks in our decision herein. These items include the delivery of truck shipment tickets to the dispatch office, which involved a dispute between the Brewery Workers and the Employer's messengers, and grievances alleging a general pattern of improper work assignments by the Employer.

⁶ This category includes Exh. A, items 1 through 9, 11, 12, and 14.

⁷ This category includes items 10, 13, and 15.

⁸ This category includes only item 16, which is unrelated to any other tasks in dispute herein. It refers to advertising materials after they have been discarded and mixed with other trash.

⁹ *International Longshoremen's Association, AFL-CIO, its affiliated Locals 799, 800, 805 and 1066, and its Boston District Council (Coldwater Seafood Corporation)*, 237 NLRB 538 (1978); *Sheet Metal Workers' Inter-*

there is no contention that an agreed-upon method for the voluntary adjustment of the dispute exists, we find that the dispute is properly before the Board for a determination under Section 10(k) of the Act.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to relevant factors.¹⁰ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience, reached by balancing those factors involved in a particular case.¹¹

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements and Board decisions

The Brewery Workers collective-bargaining agreement with the Brewery Proprietors, of which the Employer is a member, states, *inter alia*:

PART I, ARTICLE XVI, JURISDICTION

4. It is specifically understood that the storage and handling of brewery materials . . . comes within the coverage of this agreement

* * * * *

6. The loading or unloading of advertising materials at the brewery . . . shall be performed by members of the Union, provided however, that such jurisdiction does not conflict with jurisdiction over such work which is performed by members of another Union reorganized [sic] by the Employer.

In addition, the Brewery Workers agreement outlines the work of each department in a separate section of the contract. With respect to the general trucking department, part VI, article I, states:

The work of General Trucking shall consist of work as described in work lists which shall be brought up-to-date after the completion of negotiations between the Union and each Employer on an individual plant basis.

The 1955 general trucking department work list, which is the most current, includes, *inter alia*: hauling materials used in the making or packaging of

national Association, Local Union No. 41, AFL-CIO (B & W Metals Company, Inc.), 231 NLRB 122 (1977).

¹⁰ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

¹¹ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

the beer; handling mechanized street sanitation work; and miscellaneous intraplant hauling, including hauling cleaning agents and materials in accordance with past practice, and hauling advertising materials as required.

The Brewery Workers asserts that the work list requires that its members be awarded all outdoor street cleaning work. However, the list refers only to "*mechanized* street cleaning" [emphasis supplied]. At present, the Employer owns no mechanized equipment for this purpose. Therefore, the work list does not require an assignment of this task to employees represented by the Brewery Workers.

The Brewery Workers also contends that the collective-bargaining agreement and the work list require that its members be awarded the work of: transporting garbage containing advertising materials, hauling unmarked hops and grain, and transporting janitorial supplies to buildings 40 and 35. We find, however, that the relevant provisions are, at best, ambiguous with respect to these specific tasks.

The Laborers collective-bargaining agreement with the Brewery Proprietors includes, in article I, a union-security provision which requires that "[w]ork which is or has been exclusively performed by members of the Union will not be assigned to employees of any other bargaining unit of the Employer." We find that this provision is not determinative of the instant dispute.

In 1970, the Board decided a jurisdictional dispute involving the same parties.¹² However, the work in dispute in that case differed from the work contested herein,¹³ and the Board's findings and conclusions in that matter are not relevant to the instant dispute.

Accordingly, as noted above, we conclude that the collective-bargaining agreements are, at best, ambiguous, and that they, as well as the past Board decision, are not helpful to a determination of this dispute.

2. Skills

No evidence was presented indicating that members of either Union are more capable of performing the work in dispute than are members of the other Union. Accordingly, we find that this factor does not favor an assignment to employees repre-

sented by either the Brewery Workers or the Laborers.

3. Employer and area practice

The record reveals that there is a general practice at the plant that members of the Brewery Workers transport items relating to the production of the Employer's product, and members of the Laborers transport items utilized by craft union employees; i.e., members of the Carpenters and the Machinists. However, the record reveals that this rule has been subject to numerous exceptions, and the Employer will assign work in accordance with past practice if it dictates a different result.

Several witnesses presented by the Employer and the Laborers testified that, for at least the past 15 years, members of the Laborers have been primarily responsible for transporting the items listed in Exhibit A, items 1 through 9, 11, 12, and 14, from the receiving area to storerooms, boilerrooms, and other specific areas throughout the plant. The Brewery Workers witnesses testified, to the contrary, that members of the Brewery Workers have been responsible for transporting the listed items. However, the record reveals that members of the Brewery Workers have only performed this duty in isolated instances; i.e., following the conclusion of the work shift of Laborers members.¹⁴ While the record is not entirely clear on this matter, it appears that it has been the Employer's consistent practice to assign the disputed work to employees represented by the Laborers on a regular basis.

With respect to transportation of laboratory equipment, supplies, and materials from the receiving area to the laboratories, the record indicates that this work has been apportioned according to the size of the item. Specifically, members of the Brewery Workers have hauled the smaller items and members of the Laborers have transported the larger packages. Gas tanks and petri dishes are transported in volume in large boxes and therefore have been hauled by Laborers members.

One exception to this general practice is that members of the Brewery Workers have hauled all hops, grain, and other ingredients. However, when these ingredients have arrived in unmarked, unidentifiable boxes that are similar to boxes that Laborers members regularly haul, it has been the Employer's practice to assign the work to Laborers members.

With respect to outdoor cleaning functions, including street cleaning, cleaning of the Miller Mall,

¹² Local Union No. 113, Laborers International Union of North America, AFL-CIO (Miller Brewing Company), 184 NLRB 233 (1970).

¹³ The work in dispute therein included: hauling tank tubes, beer cocks, hose couplings, portable beer pumps, and hop carts for repair; hauling yeast boxes; hauling lumber used for storing hop bales; removing rubbish from Miller Inn and the administration building; and hauling gloves and boots. None of these tasks are involved herein.

¹⁴ Members of the Laborers work a single shift, which ends at approximately 4:30 p.m., while members of the Brewery Workers work three shifts, spanning the entire day.

and cleaning of the tour center, parking lots, and perimeter fences, the record indicates that members of the Laborers have traditionally performed these tasks using handtools.¹⁵ Since the Employer has no mechanical equipment to use for this purpose, the Employer's practice has been to assign this work exclusively to employees represented by Laborers.

With respect to the hauling of garbage containing advertising materials, the record reveals that members of the Laborers have performed this task whenever the trash was mixed and could not be identified as solely containing advertising materials. In contrast, pursuant to the contract and work list, members of the Brewery Workers have hauled discarded advertising materials when these materials were not mixed with other trash.

No evidence has been presented to us with respect to area practice other than at the Employer's facilities.

Based on the above, we find that the factor of Employer practice favors an assignment of the disputed work to employees represented by the Laborers.

3. Efficiency and economy

With two exceptions, this factor does not favor an award to the members of either Union. However, efficiency and economy of the Employer's operations favors an assignment of items 1 and 16 to employees represented by the Laborers.

With respect to item 1, the Employer has assigned the work of transportation of unmarked hops and grain to the laboratories to employees represented by the Laborers only when the dispatcher at the receiving area has been unable to determine the contents of the package and it appears similar to packages normally hauled by Laborers¹⁶ members. If this task were assigned to employees represented by the Brewery Workers, the dispatcher would need to open every package at the receiving area in order to ascertain that it does not contain hops or grain.

The record further indicates that an award of the work of transporting garbage containing advertising materials to brewery workers would require that this trash be separated from the trash to be transported by laborers.¹⁷ The extra task would serve to delay the handling of the trash.

¹⁵ On several occasions, the Employer has hired an outside contractor to perform this work using mechanical equipment. At these times, in deference to the 1955 work list, a member of the Brewery Workers rode "shotgun" on the truck alongside the operator of the vehicle.

¹⁶ A witness for the Brewery Workers, Union Steward William Nuoffer, conceded that at times it is impossible to identify the contents of an unmarked box without opening it.

¹⁷ Historically, laborers have been responsible for hauling trash throughout the plant.

Accordingly, we find that the factors of economy and efficiency of operation favor the award of items 1 and 16 to employees represented by the Laborers. These factors do not favor the assignment of any other work in dispute to members of either Union.

5. Employer preference

The Employer continues to assign the work in dispute to employees represented by the Laborers. The record reveals that the Employer is satisfied with and maintains a preference for this assignment. Accordingly, we find that the factor of employer preference favors an award to employees represented by the Laborers.

Conclusion

Upon the record as a whole and after full consideration of all relevant factors involved, we conclude that employees represented by the Laborers are entitled to perform the work in dispute. We reach this conclusion relying on past practice, Employer preference, and, with respect to items 1 and 16, efficiency and economy of operation. In making this determination, we are assigning the disputed work to employees of the Employer who are represented by the Laborers, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. Employees of Miller Brewing Company who are represented by Local Union No. 113, Laborers International Union of North America, AFL-CIO, are entitled to perform the following work: transporting unmarked hops and grain to the laboratories; transporting janitorial supplies, including but not limited to cleaning compounds, hand soaps, paper towels, toilet articles, and plastic trash bag liners, from the receiving area to buildings 35, 40, and 54; transporting hot and cold cups to the brewhouse, fermenting cellars, finishing cellars, guard office, laboratories in building 36, pipe shops, kegomatic area, tapomatic area,¹⁸ carpenter shop, building 29 mezzanine, building 63 engineering area, and supervisory offices in buildings 29, 58, 54, and 60;

¹⁸ All locations listed herein are at the Employer's brewery in Milwaukee, Wisconsin.

transporting coffee supplies including cups, sugar, and cream, from building 66 to the management information systems area in building 35; transporting garbage cans, ladders, dock plates, banding strips, crowbars, pry bars, "come-alongs," flashlights, and batteries ordered by the maintenance supervisor, from the receiving area to the point where the item is first used; transporting ink from the receiving area to three storerooms; transporting ink solvents from the receiving area to three storerooms and the electrical shop; transporting bulk stationery supplies from the receiving area throughout the brewery with the exception of building 55; transporting gas tanks and petri dishes to laboratories for use in testing products; cleaning the Miller Mall, streets, tour center, parking lots, and perimeter fences using handtools; transporting "sta-dri" oil absorbents from the receiving area to the boilerroom and machine shop along with empty and full oil drums; transporting boilerroom cleaning com-

pounds from the receiving area to the boilerroom; transporting muriatic acid from the receiving area to the fountains; and removing trash in which advertising materials are mixed with other trash from building 54.

2. Brewery Workers Union Local Union No. 9, directly affiliated Local Union, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Miller Brewing Company to assign the disputed work to employees represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, Brewery Workers Union Local Union No. 9, directly affiliated Local Union, AFL-CIO, shall notify the Regional Director for Region 30, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.